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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

R.E., individually and on behalf of all others similarly situated.

Plaintiff,
v.

PACIFIC FERTILITY CENTER and PRELUDE FERTILITY, INC.

Defendants

Case No. 3:18-cv-01586-JSC

JOINT STIPULATION AND [PROPOSED] ORDER FOR CONSOLIDATION AND SETTING DEADLINES

Additional Cases on Next Page

1 MEGAN BAUER AND JONATHAN BAUER,
2 individually and on behalf of all others similarly
3 situated,

4 v.
5 Plaintiffs,

6 PACIFIC FERTILITY CENTER; PRELUDE
7 FERTILITY, INC; DOES 1-10, inclusive,

8 Defendants.

9 A.B., C.D., and E.F., individually and on behalf of
10 all others similarly situated,

11 v.
12 Plaintiffs,

13 PACIFIC FERTILITY CENTER and PRELUDE
14 FERTILITY, INC;

15 Defendants.

16 Case No. 3:18-cv-01634-SK

17 Case No. 3:18-cv-02298-LB

1 WHEREAS, there are currently three related proposed class actions currently pending in the
 2 Northern District of California: (1) *R.E. v. Pacific Fertility Center, et al.*, Case No. 3:18-cv-01586-JSC
 3 (N.D. Cal. filed Mar. 13, 2018) (the “*R.E.* Action,” pending before the Honorable Jacqueline Scott
 4 Corley); (2) *Bauer, et al. v. Pacific Fertility Center, et al.*, Case No. 3:18-cv-01634-SK (N.D. Cal. filed
 5 Mar. 15, 2018) (the “*Bauer* Action,” pending before the Honorable Sallie Kim); and (3) *A.B., et al. v.*
 6 *Pacific Fertility Center, et al.*, Case No. 3:18-cv-02298-LB (N.D. Cal. filed April 17, 2018) (the “*A.B.*
 7 Action,” pending before the Honorable Laurel Beeler).

8 WHEREAS, Plaintiffs in the *R.E.*, *Bauer*, and *A.B.* Actions, along with Defendants Pacific
 9 Fertility Center, and Prelude Fertility, Inc., (together, the “parties”), by and through their respective
 10 counsel, agree that consolidation of the *R.E.*, *Bauer*, and *A.B.* Actions is appropriate because the
 11 Actions involve common questions of law and fact in that each involves breach of contract and
 12 negligence claims (among others) asserted against Pacific Fertility Center and Prelude Fertility, Inc.,
 13 arising out of the same March 4, 2018 incident in which liquid nitrogen levels in one of Defendants’
 14 tanks are alleged to have declined, resulting in alleged damage to those who entrusted Defendants with
 15 their eggs and embryos;

16 WHEREAS, Pacific Fertility Center and Prelude Fertility, Inc. are currently obligated to respond
 17 to the *R.E.* and *Bauer* complaints on April 30, 2018, pursuant to the Parties’ Joint Stipulation Extending
 18 Time to Respond to the Complaint, filed April 18 (ECF 15);

19 WHEREAS, in view of the parties’ stipulation to consolidate, the parties propose, subject to
 20 Court approval, that this Action proceed on the following schedule: Plaintiffs will file a consolidated
 21 complaint within thirty days after entry of an order consolidating the *R.E.*, *Bauer*, and *A.B.* Actions;
 22 Defendants will answer or otherwise respond within thirty days after the filing of the consolidated
 23 complaint; if the response is by motion, Plaintiffs’ opposition will be due thirty days after the motion is
 24 filed; and Defendant’s reply will be due twenty-one days after the opposition is filed;

25 WHEREAS, while the *R.E.*, *Bauer*, and *A.B.* Actions are the only federal actions arising out of
 26 the March 4, 2018 incident at Pacific Fertility Center that the parties are aware of, other actions arising
 27 out of the same incident have been filed in California state court; and

WHEREAS, the parties agree that if Defendants answer, move, or otherwise respond to any other action filed in, transferred or removed to this Court arising out of the March 4, 2018 incident before their deadline to respond to the consolidated complaint, they must concurrently answer, move, or respond to: (1) the consolidated complaint; or (2) if the consolidated complaint has not been filed, the complaints in the *R.E., Bauer, and A.B.* actions;

NOW THEREFORE, the parties through their respective counsel and subject to the Court's approval hereby stipulate that:

1. The following Actions pending in this District, and any other action arising out of the same or similar operative facts now pending or hereafter filed in, removed to, or transferred to this District shall be consolidated for all purposes, including pretrial proceedings, trial, and appeal, pursuant to Federal Rule of Civil Procedure 42(a) (hereafter the “Consolidated Action”);

- *R.E. v. Pacific Fertility Center, et al.*, Case No. 3:18-cv-01586-JSC
- *Bauer, et al. v. Pacific Fertility Center, et al.*, Case No. 3:18-cv-01634-SK; and
- *A.B., et al. v. Pacific Fertility Center, et al.*, Case No. 3:18-cv-02298-LB.

2. All papers filed in the Consolidated Action must be filed under Case No. 3:18-cv-01586-JSC, the number assigned to the first-filed case, and must bear the following caption:

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

*IN RE PACIFIC FERTILITY CENTER
LITIGATION*

Case No. 3:18-cv-01586-JSC

3. The case file for the Consolidated Action will be maintained under Master File No. 3:18-cv-01586-JSC.

4. The Clerk is directed to administratively close the following related cases:

- *Bauer, et al. v. Pacific Fertility Center, et al.*, Case No. 3:18-cv-01634-SK; and
- *A.B., et al. v. Pacific Fertility Center, et al.*, Case No. 3:18-cv-02298-LB.

5. Any proposed class action subsequently filed in, transferred or removed to this Court that arises out of the same or similar operative facts as the Consolidated Action will be consolidated with the Consolidated Action.

1 6. The following deadlines will be set: Plaintiffs will file a consolidated complaint within
2 thirty days after entry of this stipulation to consolidate the *R.E.*, *Bauer*, and *A.B* Actions; Defendants
3 will answer or otherwise respond within thirty days after the filing of the consolidated complaint; if the
4 response is by motion, Plaintiffs' opposition will be due thirty days after the motion is filed; and
5 Defendants' replies will be due twenty-one days after the opposition is filed.

6 7. If, during the course of the schedule outlined in paragraph 6, Defendants answer,
7 respond, or move to dismiss a complaint filed in, transferred or removed to this Court relating to the
8 March 4, 2018 Pacific Fertility Center incident that contains allegations substantially similar to the
9 allegations raised in the *R.E.*, *Bauer*, and *A.B.* complaints, Defendants will answer, move, or otherwise
10 respond to: (1) the consolidated complaint; or (2) if no consolidated complaint has been filed, the
11 complaints in the *R.E.*, *Bauer*, and *A.B.* actions no later than the same date on which Defendants
12 respond to the other action(s).

13 8. If Defendants answer, respond or move to dismiss another complaint relating to the
14 March 4, 2018, Pacific Fertility Center incident which is not filed in this Court during the course of the
15 schedule outlined in paragraph 6, the parties agree to use their best efforts to coordinate discovery and
16 the resolution of common legal issues existing between those actions not filed in this Court and those
17 matters pending in this Court.

18 9. By entering into this stipulation it is agreed by and between the parties through their
19 attorneys that the Defendants are not waiving any right they may have to challenge and/or object to
20 class certification, federal jurisdiction and/or any objection or challenge to the class action to which
21 they would be entitled by law, nor are Defendants waiving any objections or defenses they may have as
22 to any issues, either procedural or substantive, arising out of the consolidated action.

23 **IT IS SO STIPULATED.**

25 Dated: April 27, 2018

Respectfully submitted,

26 By: /s/ Adam E. Polk

27 Daniel C. Girard (State Bar No. 114826)

28 Jordan Elias (State Bar No. 228731)

 Adam E. Polk (State Bar No. 273000)

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Counsel for Plaintiff R.E.

Dated: April 27, 2018

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Dated: April 27, 2018

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6 Dated: April 27, 2018

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20 Dated: April 27, 2018

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29 *PRELUDE FERTILITY, INC*

FILER'S ATTESTATION

Pursuant to Civil L.R. 5-1(i)(3), regarding signatures, I, Adam E. Polk attest that concurrence in the filing of this document has been obtained.

Dated: April 27, 2018

/s/ Adam E. Polk

Adam E. Polk

[PROPOSED] ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

Dated: _____

HONORABLE JACQUELINE SCOTT CORLEY
UNITED STATES MAGISTRATE JUDGE